

## **REMARKS**

The Applicant appreciates the Examiner's analysis of the claims.

- Claims 1-39 were previously pending;
- Claims 1,11-27, 28-34, 35-37 and 38 are amended; and
- Claims 1-39 are now pending.

## **Specification**

The specification was objected to as failing to provide proper support for the term "computer readable medium." However, computer readable media are supported with some depth in paragraph [00050] on page 24 of the specification.

## **Claim Rejections under 35 USC § 101**

Claims 11-27 and 35-37 were rejected under 35 USC § 101 as failing to establish a statutory category of invention.

Claims 11-27 and 35-37 have been amended to recite systems including a computing device.

The Amendments establish a statutory category of invention. Applicant therefore requests that the 35 USC § 101 rejection be removed from claims 11-27 and 35-37.

### **Claim Rejections under 35 USC 102(b)**

Claims 1, 2, 6-8, 10, 17-19, 24, 25, 27, 28, 31, 32 and 35 were rejected under 35 USC § 102(b) as being anticipated by U.S. Pat. No. 6,430,604 to Ogle et al. (“the Ogle reference” or “Ogle”).

### **Claim 1**

Claim 1, as currently amended, defines a presence-based seamless messaging method, including:

- from within a computing environment for sending a message via a user interface associated with a first communications medium, detecting a current live presence of a potential message recipient who can be reached via a second communications medium;
- transforming the user interface to include an option of using the second communications medium; and
- activating the second communications medium in response to the detecting.

The Ogle reference, in contrast, describes a method for enabling messaging systems to use alternative message delivery mechanisms. There are numerous elements of Applicant’s subject matter that Ogle does not show or disclose, for example, Ogle does not show or disclose each element of Applicant’s claim 1.

Ogle does not show or disclose a presence-based seamless messaging method. Ogle describes a method for message delivery in which users can register one or more alternative message delivery mechanisms that become statically available as alternatives to an instant messaging system (see Ogle, Fig. 3). The Ogle alternatives do not ensure a current live presence of the recipient. The sender of the instant message is informed of the available alternative(s) and can choose to have the message delivered via an alternative, but the intended receiver might not actually be currently logged on. Ogle fails to disclose **detecting the presence of the recipient prior to making the alternative communications medium available via a user interface transformation**. Ogle only discloses conventional “online now” technology.

Applicant’s seamless messaging system detects **a new presence** of the message recipient relative to a particular communications medium and automatically changes the sender’s user interface (UI), including the relevant composition environment when desired, to suit the **communications media that the recipient is present to**. If the sender does not select automatic transitioning then the seamless messaging system presents the user with a choice of whether to change media based on the presence of the message recipient (Application, Page 7 Para [0017-0018]). Ogle does not disclose this aspect of presence-based messaging.

Since Ogle does not show or disclose each element of claim 1, Applicant respectfully requests that the 35 USC 102(b) rejection be removed, and further submits that claim 1 is allowable over the Ogle reference.

### **Dependent Claims 2, 6-8 and 10**

For at least the reasons set forth above with respect to claim 1, Applicant submits that dependent claims 2, 6-8 and 10 are also allowable over the Ogle reference. Dependent claims contain the language of the claims from which they depend. Claims 2, 6-8 and 10 depend from claim 1, therefore Applicant submits that these claims are allowable.

### **Claim 17**

Claim 17, as currently amended, defines a presence-based seamless messaging system, including:

- a computing device;
- a media transition engine, comprising:
  - a media detector to determine communications media periodically available to a potential recipient of a message;
  - a presence detector to sense a current live presence of the potential recipient prior to sending the message, wherein the presence includes a current ability of the potential recipient to receive the message via one of the detected communications media;

and

- a media integrator to render available for immediate use each communications medium for which the potential recipient is present.

For reasons similar to those discussed above for claim 1, the Ogle reference does not show or disclose each element of claim 17. For example, Ogle does not show or disclose detecting a current live presence of a recipient with respect to communications media and a media integrator to render the relevant communications media ready.

Rather Ogle describes a static registry comprising entries for message recipients, wherein each of the entries comprises an alternative message delivery mechanism, and address information for the alternatives. Each entry in the registry also has a constraint associated with each of the alternative message delivery mechanisms (Ogle, Col. 3 lines 36-65). However, Ogle does not disclose a presence detector which continues checking for the communication media currently available to the live recipient. The subject matter of Claim 17 describes that for a given recipient, a presence detector establishes which of multiple communications media are now available to a live recipient. Ogle fails to show this aspect of Claim 17.

Further, Ogle also does not disclose sensing a presence of the potential recipient **prior to sending a message** via the first communications medium. As discussed above in reference to Claim 1, Ogle describes that when a sender wishes to send an instant message to a particular recipient who is not logged on to an IMS at the time, then an extended IMS receives the message and searches for alternative mechanisms for delivering the message to user. The extended IMS forwards the message using the registered alternative, to which the recipient may not be online, and informs the sender when an alternative message delivery mechanism has been used (Ogle, Col. 9, lines 15-65). Thus, Ogle describes

detecting and using the alternative message delivery mechanism after the sender has sent the message without regard for whether the recipient is online.

Since Ogle does not show or disclose each element of claim 17, Applicant respectfully requests that the 35 USC 102(b) rejection be removed, and further submits that claim 17 is allowable over the Ogle reference.

### **Dependent Claims 18, 19, 24, 25 and 27**

For at least the reasons set forth above with respect to claim 17, Applicant submits that dependent claims 18, 19, 24, 25 and 27 are also allowable over the Ogle reference. Dependent claims contain the language of the claims from which they depend. Claims 18, 19, 24, 25 and 27 depend from claim 17, therefore Applicant submits that these claims are allowable.

### **Claim 28**

Claim 28, as currently amended, defines a computer readable storage medium containing instructions that are executable by a computer to perform actions comprising:

- during composition of a message to be sent using a first communications medium, detecting a real-time presence of a potential message recipient prior to sending the message who can be reached via a second communications medium; and
- offering a choice of using the second communications medium instead of the first communications medium.

For reasons similar to those discussed above for claim 1, the Ogle reference does not show or disclose each element of claim 28. For example, Ogle does not show or disclose “during composition of a message to be sent using a first communications medium, detecting a real-time presence of a potential message recipient prior to sending the message that can be reached via a second communications medium”. As discussed above with reference to Claim 1, Ogle describes deciding an alternative message delivery mechanism regarding which the recipient may not be online. Ogle fails to disclose that the real-time presence of the recipient is detected during composition of a message and prior to sending the message and determines the instant reply options.

Since Ogle does not show or disclose each element of claim 28, Applicant respectfully requests that the 35 USC 102(b) rejection be removed, and further submits that claim 28 is allowable over the Ogle reference.

### **Dependent Claims 31, 32**

For at least the reasons set forth above with respect to claim 28, Applicant submits that dependent claims 31, 32 are also allowable over the Ogle reference. Dependent claims contain the language of the claims from which they depend. Claims 31, 32 depend from claim 28, therefore Applicant submits that these claims are allowable.

### **Claim 35**

Claim 35, as currently amended, defines a presence-based seamless messaging system, comprising:

- a computing device;
- a recipient-controlled media transition engine, including:
  - a media detector to dynamically determine communications media presently available to a recipient of a message, wherein presently available denotes that the recipient is currently present to the communications media;
- a dynamic menu for the recipient to specify one of the communications media; and
- a media integrator to transfer a message from a sender to the recipient via the specified communications medium.

For reasons similar to those discussed above for claim 1 and 17, the Ogle reference does not show or disclose each element of claim 35. For example, Ogle does not show or disclose “a dynamic menu for the recipient to specify one of the communications media” to which the recipient is now present.

Claim 35 defines that once a recipient’s live presence over one or more communications media is determined, a menu controller posts a dynamic menu on the sender’s UI of communications media choices that allow a message to be sent “instantly,” with an assurance that the live recipient will receive the message now. The menu is called dynamic because the number of menu choices grows or shrinks in real time depending on the live presence of the recipient with respect to the multiple communications media (Application Para [0027]). Ogle fails to describe any such dynamic menu. Ogle merely describes a registry that contains an entry for message recipients and associated alternative message delivery mechanisms,

with address information for the alternatives (Ogle, Col. 3 lines 36-65). However, this registry is not dynamically updated based on recipients' live presence, and is also not available to the sender as an options menu to choose from. Hence, Ogle does not disclose the subject matter of Claim 35.

Since Ogle does not show or disclose each element of claim 35, Applicant respectfully requests that the 35 USC 102(b) rejection be removed, and further submits that claim 35 is allowable over the Ogle reference.

### **Claim Rejections under 35 USC 103(a)**

Claims 3-5, 9, 11-16, 20-23, 26, 29, 30, 33, 34 and 36-39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ogle in view of US Pub. No. 2005/0027839 to Day et al ("the Day Reference" or "Day").

### **Claim 3**

Besides being dependent on allowable base claim 1, claim 3 is also allowable because the combination of Ogle and Day does not teach or suggest all the elements of claim 3. That is, Ogle and Day, alone or in combination, do not teach or suggest transitioning to a user interface for a second communications medium in response to detecting live presence of a recipient.

Day only teaches a method in which when a sender entering a message over an instant message window crosses the allowable character limit, the sender is provided with an option to continue composing the message in the instant message window or to switch to an email. If the sender chooses to switch to email, a new email message window is initiated. The subject matter of claim 3 on the other hand describes that a seamless messaging system detects a new presence of the

intended message recipient relative to a particular communications medium and **automatically changes the sender's user interface** to that of the communications medium that the live recipient is present to. Day describes initiating a new window and fails to disclose the transitioning of one user interface into the second.

Because it does not teach or suggest the elements of Applicant's claim 3, the combination fails. Applicant respectfully submits that claim 3 is allowable over Ogle in view of Day.

#### **Claim 4**

Besides being dependent on allowable base claim 1, claim 4 is also allowable because the combination of Ogle and Day does not teach or suggest all the elements of claim 4. That is, Ogle and Day, alone or in combination, do not teach or suggest transitioning to a message composition environment associated with the second communications medium in response to the detection of the recipient's real-time presence.

Because it does not teach or suggest the elements of Applicant's claim 4, the combination fails. Applicant respectfully submits that claim 4 is allowable over Ogle in view of Day.

#### **Claim 5**

Dependent claim 5 depends from allowable claim 1. Hence, it is allowable by the virtue of its dependence from allowable base claim.

### **Claim 9**

Besides being dependent on allowable base claim 1, claim 9 is also allowable because the combination of Ogle and Day does not teach or suggest all the elements of claim 9. Ogle and Day, alone or in combination, do not teach or suggest that if the potential recipient is present in a live manner to the second communications medium, then a one-click control option is displayed for transitioning message delivery and message composition to that of the second communications medium. Day does not take into consideration the recipient's presence for displaying a one-click control option for transitioning message delivery and message composition to the second communications medium.

Because it does not teach or suggest the elements of Applicant's claim 9, the combination fails. Applicant respectfully submits that claim 9 is allowable over Ogle in view of Day.

### **Claim 11**

Claim 11, as currently amended describes a presence-based seamless messaging system, comprising:

- a computing device;
- means for detecting a current live presence of a potential message recipient, prior to sending a message, who can be reached via a second communications medium from within an application program for using a first communications medium;

- means for using the second communications medium in response to detecting the presence of the potential recipient;
- means for changing a first user interface associated with the first communications medium to a second user interface associated with the second communications medium; and
- means for sending a message via the second communications medium.

Neither Ogle nor Day, alone or in combination, teach or suggest each element of Applicant's claim 11. While Ogle describes a method that simply checks for the available alternatives in case the recipient is not logged on into the instant messaging system and sends the message instead through an available alternative. Ogle's method does not detect whether **the human recipient is really present at the alternative messaging system**. Day on the other hand only depends on the character limit of the instant message window as a criterion for switching to a new email window. Day does take into consideration the recipient's live presence at the second messaging system.

Since Ogle and Day do not teach or suggest each element of Applicant's claim 11, Applicant respectfully submits that claim 11 is allowable over Ogle in view of Day.

### **Claims 12 -16**

Dependent claims 12-16 depend from allowable claim 11. Hence, they are allowable by the virtue of their dependence from allowable base claims.

### **Claims 20-23**

Dependent claims 20-23 depend from allowable claim 17. Hence, they are allowable by the virtue of their dependence from allowable base claims.

### **Claim 26**

The Office admits that Ogle fails to disclose that the dynamic menu offers an instant reply option for multiple potential recipients, wherein potential recipients present to instant messaging are initiated into a group chat, potential recipients present to communications media but not present to instant messaging are sent the message by a communications medium for which they are present, and potential recipients not present to any communications media are sent the message via email by default.

The Office states that one of ordinary skill in the art knows that a recipient has the ability to respond to a message in the same medium in which it was received. The Applicant respectfully disagrees with the relevance of this line of reasoning. Claim 26 defines a case of multiple potential recipients, in which a relational array or database is maintained that tracks current live **presence of multiple potential recipients across multiple communications media**. Hence, in a group of potential recipients instant replies are achieved by seamlessly sending a message or reply via different media simultaneously **depending on the live presence of each recipient** to one or more of the media.

Thus, in Claim 26 the sender does not merely reply to the same messaging medium from which the sender received the message but replies based on the live

presence of each recipient to a respective medium to which the recipient is present now.

### **Claims 29, 30, 33 and 34**

Dependent claims 29, 30, 33 and 34 depend from allowable claim 28. Hence, they are allowable by the virtue of their dependence from allowable base claims.

### **Claims 36-39**

Dependent claims 36-39 depend from allowable claim 35. Hence, they are allowable by the virtue of their dependence from allowable base claims.

## **CONCLUSION**

Pending claims 1-39 are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the subject application. If any issues remain that prevent issuance of this application, the Examiner is urged to contact the undersigned attorney before issuing a subsequent Action.

Respectfully Submitted,

Dated: March 17, 2008

By: /Mark Farrell/  
Mark C. Farrell  
LEE & HAYES, PLLC  
Reg. No. 45988  
(509) 324-9256 ext 243